A

RAJA ABDUL RAHMAN RAJA ABDUL AZIZ

v.

EXXONMOBIL EXPLORATION AND PRODUCTION MALAYSIA INC

B

COURT OF APPEAL, PUTRAJAYA
KN SEGARA JCA
RAMLY ALI JCA
AZAHAR MOHAMED JCA
C [CIVIL APPEAL NO: W-02-1261-2010]
10 AUGUST 2012

LABOUR LAW: *Industrial Court - Decision - Whether Industrial Court Chairman correct in finding employee guilty of misconduct - Whether there was difference between disciplinary proceedings relating to public officers under Federal Constitution and General Orders and cases dealing with private sector employers/employees under Industrial Relations Act 1967 (IRA) - Whether IC Chairman acted within requirements under IRA*

D

E

The appellant, an employee with the respondent, was offered to leave the company on Voluntary Separation Scheme ('VSS') and would be paid the VSS benefits. However, just four days before his employment was to cease, he was suspended from work, pending investigations on allegations of misconduct. The charges against the appellant related to, *inter alia*: (i) lying during an interview in the course of formal investigations of the alleged misconduct; and (ii) removal of computer monitor and CPU from the library without permission and placing them in a box with a view to taking them out of the possession of the respondent. A domestic inquiry was carried out and the appellant was found guilty of three charges of misconduct. He was subsequently terminated by the respondent and denied the benefits of the VSS which had been promised to him. The Industrial Court ('IC') Chairman found that the respondent had proved that the appellant was guilty of misconduct as charged but concluded that the punishment of dismissal was without just cause of excuse. The appellant, thus, was awarded compensation for backwages and compensation *in lieu* of reinstatement. The High Court held that it was not for the IC to decide whether the punishment was fair

F

G

H

I

or not and the best person to judge the seriousness of the misconduct was the employer himself. The issue for the court's determination was whether the IC Chairman had erred in coming to the conclusion that the punishment of dismissal was without just cause or excuse.

Held (allowing the appeal with costs in this court and High Court, setting aside the High Court decision; reinstating the IC award)
Per KN Segara JCA (delivering the judgment of the court):

(1) The function of the IC is twofold, to determine whether the alleged misconduct had been established and whether the proven misconduct constitutes just cause or excuse for dismissal. The failure to determine these issues would be jurisdictional error which would merit interference by certiorari by the High Court. In the instant case, the IC Chairman had not erred in law in finding that the respondent had proved that the appellant was guilty of the misconduct. The Chairman, having considered and dealt with both the issues on their substantial merits, based on the evidence, had correctly concluded that the dismissal was without just cause or excuse. (paras 14 & 17-20)

(2) The cases dealing with disciplinary proceedings relating to public officers under the Federal Constitution and General Orders governing public officers and the cases dealing with private sector employers/employees under the Industrial Relations Act 1967 ('IRA') must be distinguished. In light of this, the IC Chairman had acted within the requirements of the statutory provisions in the IRA. (paras 21 & 22)

(3) The High Court judge, on the other hand, had failed to appreciate the statutory duty of the IC Chairman in finding that it was not for the IC to decide whether the punishment was fair or not and that the best person to judge the seriousness of the misconduct was the employer himself. It was not the function of the High Court to review and reassess the evidence or draw its own inferences as to facts from the evidence before the IC, unless the decision of the Chairman can be said to have one or more of the infirmities, *ie*, illegality, irrationality or "Wednesbury unreasonableness" or procedural impropriety. (paras 21, 24 & 25)

Bahasa Malaysia *Translations Of Headnotes*

Perayu, pekerja responden, ditawarkan meninggalkan syarikat di bawah Skim Persaraan Secara Sukarela ('VSS') dan akan dibayar faedah VSS. Walau bagaimanapun, empat hari sebelum tamat perkhidmatannya, dia digantung kerja, sementara menunggu siasatan atas dakwaan salah laku. Pertuduhan-pertuduhan terhadap perayu berkaitan dengan, antara lain: (i) menipu semasa temuduga dalam pelaksanaan siasatan rasmi terhadap salah laku yang didakwa; dan (ii) mengeluarkan monitor komputer dan CPU dari perpustakaan tanpa kebenaran dan meletakkannya di dalam kotak dengan niat untuk mengambil dari milikan responden. Satu siasatan dalaman dijalankan dan perayu didapati bersalah atas tiga pertuduhan salah laku. Perkhidmatannya kemudian ditamatkan oleh responden dan dia dinafikan kesemua faedah VSS yang telah dijanjikan. Pengerusi Mahkamah Perusahaan ('MP') mendapati bahawa responden telah membuktikan perayu bersalah atas salah laku seperti yang dituduh tetapi memutuskan bahawa hukuman pembuangan kerja adalah tanpa alasan dan sebab adil. Perayu, oleh itu, diawardkan pampasan gaji kebelakang dan pampasan sebagai ganti pengembalian semula kerja. Mahkamah Tinggi memutuskan bahawa MP tidak wajar memutuskan sama ada hukuman tersebut adalah adil atau tidak dan pihak yang wajar menilai keseriusan salah laku adalah majikan sendiri. Isu yang perlu dipertimbangkan oleh mahkamah adalah sama ada Pengerusi MP terkhilaf dalam membuat keputusan bahawa hukuman pembuangan kerja adalah tanpa alasan dan sebab adil.

Diputuskan (membenarkan rayuan dengan kos di mahkamah ini dan Mahkamah Tinggi, mengenepikan keputusan Mahkamah Tinggi; mengembalikan award MP)
Oleh KN Segara HMR (menyampaikan penghakiman mahkamah):

(1) Fungsi MP adalah dua peringkat, untuk memutuskan sama ada salah laku yang didakwa telah dibuktikan dan sama ada salah laku yang dibuktikan membentuk alasan atau sebab adil untuk pembuangan kerja. Kegagalan memutuskan isu-isu akan menjadi kekhilafan bidang kuasa yang akan memerlukan campur tangan melalui *certiorari* oleh Mahkamah Tinggi. Di dalam kes ini, Pengerusi MP tidak terkhilaf dari segi undang-undang dalam membuat dapatan bahawa responden telah membuktikan

bahawa perayu bersalah atas salah laku. Pengerusi memutuskan bahawa pembuangan kerja adalah tanpa alasan atau sebab adil dengan betul, selepas mempertimbangkan dan menilai kedua-dua isu tersebut atas meritnya, berdasarkan kepada keterangan.

(2) Kes-kes yang berkaitan dengan prosiding tatatertib terhadap pegawai awam di bawah Perlembagaan Persekutuan dan Perintah-Perintah Am yang mentadbir pegawai awam dan kes-kes yang berkaitan dengan majikan/pekerja-pekerja sektor swasta di bawah Akta Perhubungan Perusahaan 1967 ('Akta') mesti dibezakan. Berikutan ini, Pengerusi MP telah bertindak dalam rangkuman kehendak peruntukan statutori dalam Akta.

(3) Hakim Mahkamah Tinggi, sebaliknya, telah gagal menilai kewajipan statutori Pengerusi MP dalam membuat dapatan bahawa ia bukan tugas MP memutuskan sama ada hukuman tersebut adalah adil atau tidak dan pihak yang wajar memutuskan keseriusan salah laku tersebut adalah majikan itu sendiri. Ia bukan fungsi Mahkamah Tinggi untuk menyemak dan menilai semula keterangan atau membuat inferens sendiri berkenaan dengan fakta-fakta dari keterangan di hadapan MP, kecuali keputusan Pengerusi boleh dikatakan mengandungi salah satu atau lebih kelemahan berikut, iaitu, ketaksahan, ketidakrasionalan, atau "Wednesbury unreasonableness" atau kesalahan prosedur.

Case(s) referred to:

Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449 FC ***(refd)***

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 135

Industrial Relations Act 1967, s. 20(3)

For the appellant - S Mariappen; M/s J Azmi & Assoc

For the respondent - Gan Khong Aik (Cecilia Chiu with him); M/s Gan Partnership

[Appeal from High Court, Kuala Lumpur; Judicial Review No: R1-25-215-2009]

Reported by S Barathi

JUDGMENT

KN Segara JCA:

[1] The employee/appellant's appeal before us is against the decision of the High Court Judge quashing the award of the Industrial Court Chairman handed down on 25 May 2009 pursuant to an application for judicial review by the respondent/employer in the High Court.

[2] The appellant is an employee in the private sector and is not a public officer. Article 135 Federal Constitution and Chapter D of the General Orders do not apply with reference to any misconduct by the appellant.

[3] The appellant was employed as a Draftsman in 1985 by the respondent.

[4] He was transferred from KL to Kerteh, Terengganu in 1987.

[5] In February, 2003, the respondent accepted the appellant's request to leave the company on the Voluntary Separation Scheme (VSS).

[6] The appellant was notified by the respondent that his employment would cease with effect from 1 July 2003 and he would be paid the benefits as per the VSS.

[7] The appellant would receive a total separation payment benefits of RM151,445.39.

[8] On 27 June 2003, just four days before his employment was to cease under the VSS (on 1 July 2003), the appellant was suspended from work with effect from 30 June 2003, pending investigations on alleged misconducts by the appellant.

[9] On 16 September 2003 the respondent preferred four charges against the appellant.

[10] The four charges related to: (i) lying during an interview on 30 June 2003 in the course of formal investigations of the alleged misconduct; (ii) removal of computer monitor and CPU from company library without permission and placing them in a box with a view to taking them out of the possession of the respondent.

[11] Another employee, Mat Sabri, was jointly charged with the appellant in respect of the charge relating to the removal of the computer monitor and CPU. A

[12] A domestic inquiry was conducted by the respondent on 30 September 2003 and 1 October 2003. The appellant was found guilty on three charges of misconduct. B

[13] The appellant's employment was terminated by the respondent by letter dated 16 October 2003 and the respondent denied the appellant the benefits of the VSS promised to him earlier. C

[14] We are of the view that the Industrial Court's Chairman had not erred in law when he found that the respondent had proved that the appellant was guilty of misconduct as charged. D

[15] The only issue before us is whether the Industrial Court's Chairman had erred in coming to the conclusion that the punishment of dismissal was without just cause or excuse.

[16] The duty of the Industrial Court is set out in s. 20 Industrial Relations Act 1967. E

[17] The function of the Industrial Court is two-fold: first, to determine whether the alleged misconduct has been established and secondly, whether the proven misconduct constitutes just cause or excuse for dismissal. Failure to determine these issues would be a jurisdictional error which would merit interference by *certiorari* by the High Court (see *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 4 CLJ 449, Federal Court). F

[18] We are satisfied that the Industrial Court's Chairman has considered and dealt with both these issues on their substantial merits, based on the evidence before him. G

[19] We are of the view that the Industrial Court's Chairman, after finding that the appellant had in fact committed the misconduct, had correctly gone on to consider whether the proven misconduct constitutes just cause or excuse for the dismissal. H

[20] We are satisfied that the Industrial Court's Chairman had taken into account the entire evidence, the facts and the circumstances at the material time and concluded the dismissal was without just cause or excuse. I

[21] We are of the view that the High Court Judge failed to appreciate the statutory duty of the Industrial Court Chairman when the High Court Judge stated that it was not for the Industrial Court to decide whether the punishment was fair or not and the best person to judge the seriousness of the misconduct is the employer himself. On this issue, we are of the view that the cases dealing with disciplinary proceedings relating to public officers under the Federal Constitution and General Orders governing public officers, and the cases dealing with private sector employers/employees under the Industrial Relations Act 1967 must be distinguished.

[22] We are satisfied that the Industrial Court's chairman had acted within the requirements of the statutory provisions in the Industrial Relations Act 1967 and the principles set out in several Federal Court cases touching on the issues before him. He has given due consideration to local Industrial Court decisions as well as cases from the common law jurisdiction. He was duty bound to investigate the facts notwithstanding any domestic inquiry conducted by the respondent, analyse and scrutinise the facts and thereafter apply the law to those facts as found by him, including any matters affecting punishment.

[23] We are of the view that the Industrial Court Chairman was not wrong in law when he considered that the punishment of dismissal was without just cause or excuse under the particular facts and circumstances of the appellant's case, and thereafter awarded the appellant total compensation in the sum of RM161,574 (RM92,328 + RM69,246), being back wages and compensation, *in lieu* of reinstatement.

[24] We are of the view that the award of the Industrial Court does not suffer from any of the following infirmities, namely:

(i) illegality – that the decision maker had failed to keep strictly within the perimeters of his powers;

(ii) irrationality or "Wednesbury unreasonableness" – that the decision was "so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it"; and

(iii) procedural impropriety – that the decision maker failed to observe basic rules of natural justice and or procedural rules;

to warrant the award to be set aside.

(see *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147).

[25] In a judicial review application from an award of the Industrial Court pursuant to a s. 20(3) Industrial Relations Act 1967, it is not the High Court's function to review and reassess evidence or draw its own inferences as to facts from the evidence before the Industrial Court, unless the Chairman's decision/award can be said to have one or more of the infirmities referred to above.

[26] For the above reasons the appeal is allowed. Decision of the High Court Judge is set aside and award of Industrial Court reinstated. Costs to appellant fixed at RM20,000 here and below.

[27] Deposit refunded to the appellant.